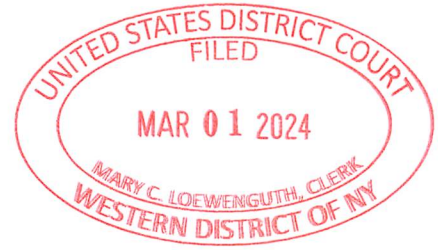


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



TREVIS L. FUNCHES,

Plaintiff,

v.

20-CV-1087 (JLS)

L. TUCKER, T. SMITHERS, R.
BABCOCK, JAMES CHAMPAGNE, D.
GLEASON, STEPHEN M.
WOODWARD,

Defendants.

DECISION AND ORDER

Pro se plaintiff Trevis L. Funches commenced this action in June 2020, when he filed the complaint in the United States District Court for the Northern District of New York. Dkt. 1. In August 2020, the Northern District transferred the claims related to Plaintiff's confinement at the Five Points Correctional Facility to this Court. Dkt. 8. Plaintiff then filed an amended complaint. Dkt. 13. This Court issued a decision and order dismissing some claims, allowing other claims to proceed, and granting Plaintiff leave to file a second amended complaint. Dkt. 16. Plaintiff filed a second amended complaint as directed. Dkt. 17. The Court issued a decision and order dismissing some claims and allowing some claims to proceed to service against certain Defendants. Dkt. 20.

Defendants answered the second amended complaint on November 20, 2023. Dkt. 27. The same day, the Court referred the case to United States Magistrate

Judge H. Kenneth Schroeder, Jr., for all pretrial matters, pursuant to 28 U.S.C. §§ 636(b)(1)(A)–(C). Dkt. 28. The Court mailed a copy of the referral order to Plaintiff (*id.*), but the mail was returned as undeliverable (Dkt. 30).

Judge Schroeder issued an order setting a preliminary pretrial conference for December 14, 2023, and mailed a copy of that order to Plaintiff. Dkt. 29. That order, too, was returned as undeliverable. Dkt. 31. The preliminary pretrial conference did not occur.

On December 21, 2023, Judge Schroeder issued a Report and Recommendation (“R&R”), recommending that this Court dismiss Plaintiff’s case, pursuant to Federal Rule of Civil Procedure 41(b). Dkt. 32. A copy of the R&R was mailed to Plaintiff, but it also was returned as undeliverable. Dkt. 33.


Neither party objected to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

Though not required to do so here, this Court nevertheless reviewed Judge Schroeder's R&R. Based on that review, and absent any objections, the Court accepts and adopts the R&R.

For the reasons stated above and in the R&R, the Court **dismisses the case, pursuant to Federal Rule of Civil Procedure 41(b)**. The Clerk of the Court shall close this case.

SO ORDERED.

Dated: March 1, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE